

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT,
TRACK TWO SETTLEMENT, AND
ASTRAZENECA CLASS 2 AND 3
SETTLEMENTS

Judge Patti B. Saris

**CLASS PLAINTIFFS' SIXTH STATUS REPORT FOR BMS AND
TRACK TWO SETTLEMENTS**

A. Background

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement (Docket No. 7313) and an Order for Final Consideration of the Track Two Settlement (Docket No. 7314) (collectively, the "November Orders"). The November Orders directed Class Counsel to provide monthly status reports "detailing the progress" of the BMS and Track 2 Settlements. This is the sixth such report.

B. BMS Proposed Settlement

Utilizing data produced in December 2010 by CMS, Rust Consulting, Inc. ("Rust"), the Court-appointed claims administrator, identified by name 695,910 individuals who are potential members of Class 1 in the BMS Proposed Settlement because they were administered a BMS eligible drug during the class period. In compliance with the Court-approved BMS settlement schedule, direct notice was mailed to each individual identified in the CMS data. That mailing

was completed on December 30, 2010. Recipients of the initial mailing had until January 31, 2011 to postmark the return card that accompanied the initial mailing.

Rust received approximately 16,500 return notice cards. On a rolling basis, Rust, in accordance with the Court's schedule, mailed each individual who returned a reply card the full notice with their pre-printed claim information obtained from CMS data.

On Monday, March 28, 2011 the Court heard argument in support of the parties' Joint Motion For Final Approval of the BMS Settlement. The Court also heard argument from one objector to the Settlement. At that hearing the Court requested some additional information, including how rebalancing of the distribution of settlement funds to members of Class 1 could be accomplished. The Court has scheduled a further hearing regarding final approval of the BMS Settlement on May 5, 2011.

C. Track Two Proposed Settlement

On December 31, 2010, Class Plaintiffs filed a Status Report Regarding the Track Two Settlement. Docket No. 7367. In that report, Class Plaintiffs outlined for the Court's consideration the expense associated with direct mail notice to all 19.3 million individuals identified in CMS data as potential Class 1 members in the Track Two Settlement. Class Counsel also provided the Court with information on potential alternatives to the original direct mail notice plan and the expense associated with each. On January 7, 2011, in response to a motion for reconsideration of the Court's January 4, 2011 Order filed by TPP Allocation Counsel and the ISHPs (Docket No. 7379), the Court directed Class Counsel to proceed with the Alternative 3 notice and publication plan identified in Class Counsels' December 31, 2010 report. That alternative program consists of direct mail notice to 2.2 million individuals

identified in the CMS data as having Class A drug administrations and a national media notice program directed at Class 1 members with Class B drug administrations.

In accordance with the revised notice program and schedule approved by the Court, on or before February 12, 2011, Rust mailed an initial notice to each of the approximately 2.2 million consumers identified in the CMS data. These consumers had until March 30, 2011 to return the reply card indicating they made cash or percentage co-payments. As of April 25, 2011 Rust had received approximately 87,100 reply cards in response.

Each of the consumers responding were mailed a full notice with their pre-printed claim information. In addition, national media began on April 4, 2011 to reach those consumers who will not receive direct mail notice. Neither Rust nor Class Counsel anticipate any delay in completing the notice process in accordance with the Court's approved schedule. A final approval hearing is scheduled for June 13, 2011.

D. The Next Status Report

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on June 1, 2011.

DATED: April 28, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S SIXTH STATUS REPORT FOR BMS AND TRACK TWO SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on April 28, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman
Steve W. Berman